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VIA ECFS

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street SW
Washington, DC 20554

Re: *Connect America Fund, WC Docket No. 10-90; A National Broadband Plan for Our Future, GN Docket No. 09-51; Establishing Just and Reasonable Rates for Local Exchange Carriers, WC Docket No. 07-135; High-Cost Universal Service Support, WC Docket No. 05-337; Developing a Unified Intercarrier Compensation Regime, CC Docket No. 01-92; Federal-State Joint Board on Universal Service, CC Docket No. 96-45; Lifeline and Link-Up, WC Docket No. 03-109*

Dear Ms. Dortch:

As the Commission redirects the Universal Service Fund ("USF") from supporting legacy voice services to high-speed Internet access, this letter is submitted on behalf of Cox Communications, Inc. ("Cox") to propose accompanying reforms to the process for eligible telecommunications carrier ("ETC") certification.¹ Cox is committed to working with the Commission and the states in bringing the promise of broadband to unserved communities and firmly believes that competition is the best way to do so efficiently. It is also the most consistent with Congress's vision for a "pro-competitive, deregulatory framework" for telecommunications policy.² Nevertheless, consumers are the ultimate payors into the federal subsidies that comprise the USF; therefore, federal and state policymakers have a responsibility to enact regulations and policies that protect this public trust. Providing a pro-competitive

¹ See *Connect America Fund; A National Broadband Plan for Our Future; Establishing Just and reasonable Rates for Local Exchange Carriers; High-Cost Universal Service Support; Developing a Unified Intercarrier Compensation Regime; Federal-State Joint Board on Universal Service; Lifeline and Link-Up*; WC Docket Nos. 10-90, 07-135, 05-337, 03-109, CC Docket Nos. 01-92, 96-45, GN Docket No. 09-51, Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking, 26 FCC Rcd 4554 (2011).

² Conference Report, Telecommunications Act of 1996, House of Representatives, 104th Congress, 2d Session, H.Rept. 104-458, at 1. See also 47 U.S.C. § 214(e)(2) calling for the designation of "more than one" ETC except in unusual circumstances; 47 U.S.C. § 253 (prohibiting barriers to entry).

framework around the ETC process is an important step to ensuring that the goals of a financially responsible Connect America Fund (“CAF”) are met.

Cox has had extensive experience in certifying as a competitive ETC (“CETC”) to participate in the current USF to provide Lifeline/Linkup services and deploy to high cost areas. Cox currently has ETC certification in nine states³ and also participates in California’s state universal service program.⁴ Unfortunately, Cox has faced significant challenges in some states in securing or expanding its CETC status. For example, in Oklahoma and Louisiana, Cox had to engage in costly and lengthy disputes that ultimately prevented Cox from serving high cost areas to the detriment of potential customers. It is clear that other providers have had similar experiences, because the idea of creating more uniformity in the ETC designation process enjoys significant support in the record.⁵

Based on these collective experiences and with the goal of promoting the success of the CAF, Cox strongly urges the Commission to develop uniform parameters for the ETC designation process. The Commission can do this by adopting eligibility rules that will apply whenever the Commission designates a broadband ETC (“BETC”) and, in states that conduct their own ETC designations, conditioning the availability of CAF funding to those areas where State commissions determine ETC status in compliance with the Commission’s rules.⁶ These rules can guide the states to evaluate interested broadband providers appropriately and fairly and to

³ Cox participates in the federal Lifeline and Linkup Programs in Connecticut, Georgia, Iowa, Kansas, Louisiana, Nebraska, Oklahoma, and Rhode Island. On October 11, 2011, Cox Arizona received approval as an ETC for the purpose of receiving federal Low Income Universal Service support for Lifeline and Link Up services. Cox has deployed service using High Cost Fund subsidies in Georgia, Oklahoma, and Louisiana.

⁴ A competitively neutral process for designation of eligible providers also can work successfully at the state level. For example, in California, Cox opted to become eligible to receive support from the California High Cost Fund-B, which enabled Cox to draw from that state High Cost Fund while being subject to specific Carrier of Last Resort (“COLR”) Obligations. Under California’s rules, ILECs could not object to Cox’s decision to participate in the state fund, and the rules for participation, including any service and reporting obligations, were clearly spelled out ahead of time.

⁵ See, e.g., AT&T Comments, WC Docket Nos. 10-90 *et al.* (filed April 18, 2011) at 105-108; Satellite Broadband Providers Comments, WC Docket Nos. 10-90 *et al.* (filed April 18, 2011) at 19-24; ViaSat Comments, WC Docket Nos. 10-90 *et al.* (filed April 18, 2011) at 41-43.

⁶ It is reasonable to condition eligibility for CAF support on compliance with the Commission’s ETC rules because ETC certification processes that did not comply with those rules could lead to inefficient use of CAF support. For instance if a State commission refuses to designate all qualified entities as ETCs or those ETCs that were designated did not meet the Commission’s criteria (thereby reducing the number of potential bidders for CAF support to the detriment of unserved consumers), the Commission should decline to allocate CAF funding until such problems are resolved.

avoid costly disputes that would detract focus from efficient deployment of broadband in unserved areas.⁷

Consistent with section 214(e)(1), the uniform eligibility criteria for BETCs should be narrowly tailored to identify those providers that are capable of providing the services that will be supported under the CAF. For example, the criteria could specify that the applicant entity must: 1) be able to provide the supported voice and broadband services, either directly or through arrangements with other providers, throughout the relevant area; 2) commit to comply with applicable obligations regarding the provision of 911 service, emergency preparedness and network outages; 3) commit to comply with any applicable consumer protection requirements; and 4) offer voice service on a stand-alone basis.

In order to implement the uniform BETC designation criteria, Cox recommends that the Commission impose as a condition on state receipt of CAF funding that states should not pass laws or regulations that modify the BETC rights and obligations established by the FCC, including regulations that affect the criteria for being designated as a BETC.

In addition, to ensure that all BETC applicants are treated equally, the Commission should adopt a shot clock on the review of BETC applications by a state, *e.g.*, 60-90 days. Any state dismissal of an application for BETC designation should be subject to appeal to the Commission.⁸

The framework set out above is informed by Cox's experience as one of a few ETCs that offers wired telephony services in direct competition with both large and small ILECs serving high-cost areas. The suggested framework would address the most significant concerns that have made it difficult for Cox and other competitive LECs to obtain ETC status in high-cost areas, to prevent similar restrictions from impeding the success of the new CAF program.

Finally, it is particularly important for the Commission to adopt a process for designating broadband ETCs when a state commission cannot act, consistent with the criteria discussed

⁷ Although the Fifth Circuit held that the Commission may not prohibit the states from imposing additional eligibility requirements on ETCs beyond those in the statute, the court held that "if a state commission imposed such onerous eligibility requirements that no otherwise eligible carrier could receive designation, that state commission would probably run afoul of § 214(e)(2)'s mandate to 'designate' a carrier or 'designate more than one carrier.'" *Texas Office of Public Utility Counsel v. FCC*, 183 F.3d 393, 418 n.31 (5th Cir. 1999). It also likely would create a barrier to entry under 47 U.S.C. § 253. In addition, the Fifth Circuit did not address the Commission's power to restrict funding from states that impose undue restrictions on the ETC designation process. *See Texas Counsel*, 183 F.3d at 418.

⁸ The Commission has in the past provided for direct FCC appeal of state decisions. *See, e.g., Numbering Resource Optimization*, CC Docket No. 99-200, Third Report and Order and Second Order on Reconsideration in CC Docket No. 96-98 and CC Docket No. 99-200, 17 FCC Rcd 252, 282 ¶ 66 (2001) ("carriers may appeal to the Commission safety valve decisions made by the states").

above. Some state legislatures have expressly limited the state commission's ability to regulate broadband services, and in other states, the state commission cannot act without explicit authority.⁹ Broadband providers interested in becoming ETCs in those states should be able to apply directly at the Commission, much as wireless companies do today, pursuant to the Commission's authority under Section 214(e)(6) of the Communications Act of 1934 as amended.¹⁰

The ETC certification process will be critical to the success of the new CAF. Without a clear and competitively neutral process for certifying broadband providers as ETCs, competitors like Cox may be blocked in their efforts to access available federal funds to efficiently deploy broadband services to currently unserved consumers, depriving these consumers and the Commission of the benefits of competition.

Respectfully submitted,

_____/s/
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⁹ See, e.g., Nev. Rev. Stat. § 704.684 (2009); GA. CODE ANN. § 46-5-220 (2011); FLA. STAT. § 364.011 (2011).

¹⁰ 47 U.S.C. § 214(e)(6).